

**From:** Fugh, Justina  
**To:** [Brooks, Phillip](#)  
**Subject:** response to your question  
**Date:** Friday, May 05, 2017 7:34:00 PM  
**Attachments:** [insured01.png](#)  
[2.0L tr.pdf](#)  
[final waiver December 2015.pdf](#)

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Hi there,

Yes, you can participate in the settlement under the conditions of the April 27, 2017 letter that you received from VW.

Given that you personally own an affected VW/Audi vehicle, EPA issued you a waiver to allow you to participate in the enforcement action. Your official participation yielded the historic settlement but, to ensure you did not have an actual or perceived conflict of interest, you agreed to opt out of the class action lawsuit. Now, of its own volition, VW has reached out to all of the owners of affected vehicles who had opted out. This offer to you is not enhanced by your EPA position at all, nor did you cause VW to make this offer. OGC/Ethics determines that you may accept this latest, unsolicited offer from VW to allow you, as the owner of an eligible 2.0-Liter VW/Audi Diesel vehicle who had opted out of the settlement with the class action, to now participate in the settlement program.

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Happy weekend,  
Justina

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**From:** Brooks, Phillip  
**Sent:** Wednesday, May 03, 2017 10:31 AM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** Time sensitive ethics inquiry

Justina

A couple days ago I received a letter from Volkswagen of America stating that the Company has decided to those vehicle owners who opted out of the Class the same benefits obtained by the Class Action (attached). Specifically what this means is that VW is offering to buyback or repair (with compensation) vehicles owned by people who opted out of the Class Action. As you know, I opted out of the class action. Therefore, I am now within the general group being offered buyback/repair.

In the original round of conflict analysis it was determined that it was in the interest of EPA for me to participate in the enforcement action, but that to avoid an appearance of conflict, I needed to agree to waive any right to participate in the Class Action if I intended to work on the case. I voluntarily agreed to waive my right to participate in the Class Action and do not now seek to alter that position. I do, however, wish to determine whether the recent offer from VW presents a different situation. I own a two-liter vehicle covered by a consent decree between the United States (including EPA) and the VW entities that was entered by a court on October 25, 2016. A Class Action settlement entered contemporaneously with the consent decree established the rights of Class Members to certain rights and compensation from VW entities. That Class Action covered all persons who owned certain two-liter vehicles, including the type of vehicle that I own. Among the options Class Members received is the right to sell back their vehicle to VW at a price determined by a set formula.

At the time of the decision on my request for a waiver to participate in the enforcement action, VW was also offering a "goodwill" package consisting of a \$500 gift card and \$500 in VW vehicle services. The determination was made that I could accept these offers because they were generally available to all members of an identified public group. I do not know why VW is making this offer. It could be because they want to make sure that they hit the requisite number of buyback/fixes required under the consent decree. It could be because they want to reduce their exposure to additional lawsuits. Or it could be for some other reason not apparent to me. I am sure that accepting this offer would require me to waive any right of action against VW for claims associated with the matters addressed in the Class Settlement.

The memorandum approving my waiver request provided:

I have also determined that your acceptance of the goodwill gift which qualifies for the gift exception at 5 C.F.R. § 2635.204(c)(2)(i), would not affect your impartiality in this matter. The exception permits employees to accept opportunities and benefits, such as commercial discounts, that are "[o]ffered to members of a group or class in which membership is unrelated to Government employment." VW is providing prepaid loyalty cards and roadside assistance to all eligible affected diesel owners, and it appears that acceptance does not require that the employee agree to take any personal or official action in exchange for the gift. I have determined that acceptance of this gift would not affect your independence in the enforcement matter, that it is not likely that a reasonable person would question your impartiality in this matter, and even were there an appearance concern, the interest of the Government in your participation "outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." 5 C.F.R. §§ 2635.502(c), (d).

I have attached the waiver determination for your convenience.

Given that the current offer from VW is unconnected to my government position, is made to members of a group that is unrelated to my government position and the final entry of the settlement regarding the two-liter vehicles occurred last year, am I able to accept VW's general offer to opt outs? I would like to do this if I can. The letter sets a deadline of May 12 to accept.

I am sorry to put this on your plate again, but it is significant to me.

Than you.